



7536-01-P

## **NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**

### **National Endowment for the Humanities**

#### **45 CFR Part 1168**

#### **RIN 3136-AA39**

### **Implementing the Federal Civil Penalties Adjustment Act Improvements Act of 2015**

**AGENCY:** National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The National Endowment for the Humanities (NEH) is adjusting the civil monetary penalties it imposes for violations of NEH's New Restrictions on Lobbying regulation, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act). The 2015 Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), requires such adjustments to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

**DATES:** *Effective date:* This interim final rule is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. *Applicability date:* The adjusted penalty amounts will apply to penalties assessed on or after January 15, 2020, if the associated violations occurred after November 2, 2015.

**ADDRESSES:** You may send comments by email to [gencounsel@neh.gov](mailto:gencounsel@neh.gov).

*Instructions:* Include “RIN 3136-AA39” in the subject line of the email.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606-8322; [gencounsel@neh.gov](mailto:gencounsel@neh.gov).

**SUPPLEMENTARY INFORMATION:**

**1. Background**

For each regulation that imposes a civil monetary penalty, the 2015 Act requires agencies to: (1) adjust the level of civil monetary penalties with an initial “catch-up” inflation adjustment through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation.

The Inflation Adjustment Act defines “civil monetary penalty” as a penalty, fine, or other sanction that is (1) for a specific monetary amount provided by Federal law, or has a maximum amount provided by Federal law; (2) assessed or enforced by an agency pursuant to Federal law; and (3) assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

The formula for the amount of a civil monetary penalty inflation adjustment is prescribed by law—as explained in Office of Management and Budget (OMB) Memorandum M-16-06 (February 24, 2016)—and is based on the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) published by the U.S. Department of Labor for the month of October preceding the date of the adjustment, relative to the October CPI-U in the year of the previous adjustment. Additionally, the 2015 Act eliminated the ten-percent cap on adjustments imposed by the Debt Collection Improvement Act of 1996. Instead, the 2015 Act imposes a cap on the amount of the adjustment, such that the amount of increase may not exceed 150 percent of

the pre-adjustment penalty amount. Therefore, the total penalty amount resulting from adjustments under the 2015 Act may not exceed 250 percent of the pre-adjustment penalty amount.

NEH has only one regulation with civil monetary penalty provisions which requires adjustment under the 2015 Act: its New Restrictions on Lobbying (45 CFR 1168).

## **2. Adjustments to Civil Monetary Penalties in NEH’s New Restrictions on Lobbying Regulation**

This interim final rule incorporates the initial “catch up” adjustment and the annual adjustment for 2020, and applies those adjustments cumulatively to the civil monetary penalties in 45 CFR 1168.400. The calculations for these adjustments are in accordance with the OMB memoranda providing guidance on implementing the initial “catch up” adjustment<sup>1</sup> and the 2020 adjustment<sup>2</sup> under the 2015 Act.

### **A. Initial “Catch-Up” Adjustment for Inflation**

NEH determined the first “catch up” adjustment by calculating the percent change between the CPI-U for October of the last year in which Congress adjusted the penalties (not including any adjustment made pursuant to the Inflation Adjustment Act before November 2, 2015), and the CPI-U for October 2015, and then rounding to the nearest dollar.

Congress set the penalty amounts found in 31 U.S.C. 1352(c) in 1989, and has not adjusted them since. At that time, the range of civil penalties was a minimum of \$10,000 and a

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<sup>1</sup> OMB Memorandum M-16-06 (February 24, 2016).

<sup>2</sup> OMB Memorandum M-20-05 (December 16, 2019).

maximum of \$100,000. Between October 1989 and October 2015, the CPI-U increased by 189.361 percent.

Therefore, the post-adjustment minimum penalty under NEH's New Restrictions on Lobbying regulation is  $\$10,000 \times 1.89361 \text{ percent} = \$18,936.10$ , which rounds to \$18,936. The post-adjustment maximum penalty under NEH's New Restrictions on Lobbying regulation is  $\$100,000 \times 1.89361 = \$189,361$ . These post-adjustment penalties are less than 250 percent of the pre-adjustment penalties, so they do not implicate the post-adjustment amount limitation in the 2015 Act. Thus, the penalty range under NEH's New Restrictions on Lobbying regulation, for the purposes of the initial "catch up" adjustment, is a minimum of \$18,936 and a maximum of \$189,361.

## **B. 2020 Adjustment for Inflation**

This interim final rule also incorporates the required subsequent annual adjustment for 2020. NEH determined the 2020 adjustment by calculating the percent increase between the CPI-U for the month of October preceding the date of the adjustment (October 2019) and the CPI-U for the October one year prior to the October immediately preceding the date of the adjustment (October 2018).

For 2019, the penalty range for violations under NEH's New Restrictions on Lobbying regulation was a minimum of \$20,134 and a maximum of \$201,340.<sup>3</sup> Between October 2018 and October 2019, the CPI-U increased by 101.764 percent.

Therefore, the new, post-adjustment minimum penalty for 2020 under NEH's New Restrictions on Lobbying regulation is  $\$20,134 \times 1.01764 = \$20,489.16$ , which rounds to

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<sup>3</sup> Table 1 details the annual adjustments to New Restrictions on Lobbying Civil Monetary Penalties for years 2016–2020.

\$20,489. The new, post-adjustment maximum penalty for 2020 under NEH’s New Restrictions on Lobbying regulation is  $\$201,340 \times 1.01764 = \$204,891.64$ , which rounds to \$204,892. These post-adjustment penalties are less than 250 percent of the pre-adjustment penalties, so they do not implicate the post-adjustment amount limitation in the 2015 Act. Thus, the range of penalties under NEH’s New Restrictions on Lobbying regulation, for the purposes of the 2020 annual adjustment, is a minimum of \$20,489 and a maximum of \$204,892.

Table 1—Annual Adjustments to New Restrictions on Lobbying Civil Monetary Penalties, 2016–2020

<b>Year</b>	<b>Baseline Penalty Range</b>	<b>Applicable Multiplier Based on Percent Increase in CPI-U</b>	<b>New Baseline Penalty Range</b>
2016	\$10,000 – \$100,000	1.89361	\$18,936 – \$189,361
2017	\$18,936 – \$189,361	1.01636 <sup>4</sup>	\$19,246 – \$192,459
2018	\$19,246 – \$192,459	1.02041 <sup>5</sup>	\$19,639 – \$196,387
2019	\$19,639 – \$196,387	1.02522 <sup>6</sup>	\$20,134 – \$201,340
2020	\$20,134 – \$201,340	1.01764	\$20,489 – \$204,892

### 3. Subsequent Annual Adjustments

The 2015 Act requires agencies to make annual adjustments to civil penalty amounts no later than January 15 of each year following the initial adjustment. NEH will calculate the subsequent annual adjustments using the same method as the annual adjustment previously

<sup>4</sup> OMB Memorandum M-17-11 (December 16, 2016).

<sup>5</sup> OMB Memorandum M-18-03 (December 15, 2017).

<sup>6</sup> OMB Memorandum M-19-04 (December 14, 2018).

described herein. If the CPI-U does not increase, then the civil penalties remain the same. Therefore, if NEH adjusts penalties in January 2021, NEH will determine the adjustment by calculating the percent change between the CPI-U for October 2020 (the October immediately preceding the date of adjustment) and October 2019 (the October one year prior to October 2020).

NEH will publish a Notice in the *Federal Register* containing the amounts of these annual inflation adjustments no later than January 15 of each year.

#### **4. Compliance**

##### **Administrative Procedure Act of 1946**

NEH finds good cause to issue this interim final rule without prior notice and comment. The 2015 Act requires agencies to adjust their civil monetary penalties according to a statutory formula, and NEH does not have any discretion when determining the amount of its adjustments; it merely performs ministerial computations to determine those amounts. As such, prior notice and comment is unnecessary because NEH would be unable to change the substance of this rule in response to suggestions from commenters. NEH is accepting public comments up to thirty (30) days after publication of this interim final rule, and may address any comments received when it publishes a final rule adopting this interim final rule.

##### **Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulatory Review**

This action is not a significant regulatory action and was therefore not submitted to OMB for review.

### **Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs**

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### **Executive Order 13132, Federalism**

This rulemaking does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### **Executive Order 12988, Civil Justice Reform**

This rulemaking meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this interim final rule is written in clear language designed to help reduce litigation.

### **Executive Order 13175, Indian Tribal Governments**

Under the criteria in Executive Order 13175, NEH evaluated this interim final rule and determined that it will not have any potential effects on Federally recognized Indian Tribes.

### **Executive Order 12630, Takings**

Under the criteria in Executive Order 12630, this rulemaking does not have significant takings implications. Therefore, a takings implication assessment is not required.

### **Regulatory Flexibility Act of 1980**

This rulemaking will not have a significant adverse impact on a substantial number of small entities, including small businesses, small governmental jurisdictions, or certain small not-for-profit organizations.

#### **Paperwork Reduction Act of 1995**

This rulemaking does not impose an information collection burden under the Paperwork Reduction Act. This action contains no provisions constituting a collection of information pursuant to the Paperwork Reduction Act.

#### **Unfunded Mandates Reform Act of 1995**

This rulemaking does not contain a Federal mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year.

#### **National Environmental Policy Act of 1969**

This interim final rule will not have a significant effect on the human environment.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This interim final rule will not be a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

#### **E-Government Act of 2002**



All information about NEH required to be published in the *Federal Register* may be accessed at [www.neh.gov](http://www.neh.gov). The website <https://www.regulations.gov> contains electronic dockets for NEH's rulemakings under the Administrative Procedure Act of 1946.

### **Plain Writing Act of 2010**

To ensure this final rule was written in plain and clear language so that it can be used and understood by the public, NEH modeled the language of this final rule on the Federal Plain Language Guidelines.

### **Lists of Subjects in 45 CFR 1168**

Administrative practice and procedure, Lobbying, Penalties.

For the reasons stated in the preamble, the National Endowment for the Humanities amends 45 CFR part 1168 as follows:

### **PART 1168 – NEW RESTRICTIONS ON LOBBYING**

1. The authority citation for part 1168 is revised to read as follows:

Authority: 20 U.S.C. 959(a)(1); 28 U.S.C. 2461 note; 31 U.S.C. 1352.

2. Amend § 1168.400:

- a. By removing “\$10,000” and adding in its place “\$20,489” and by removing “\$100,000” and adding in its place “\$204,892”, respectively, each place they appear in paragraphs (a), (b), and (e); and
- b. By adding paragraph (g).

The addition reads as follows:

## **§ 1168.400 Penalties.**

\* \* \* \* \*

(g) The penalty amounts listed under paragraphs (a), (b), and (e) of this section shall be adjusted annually for inflation. NEH will publish a document in the *Federal Register* containing the new penalty amounts no later than January 15 of each year.

3. Amend appendix A to part 1168:

- a. By removing “\$10,000” and adding in its place “\$20,489” and by removing “\$100,000” and adding in its place “\$204,892”, respectively, each place they appear; and
- b. By adding a section entitled “Annual Adjustments for Inflation” at the end.

The addition reads as follows:

### **Appendix A to Part 1168—Certification Regarding Lobbying**

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#### *Annual Adjustments for Inflation*

The penalty amounts listed in this appendix will be adjusted annually for inflation. NEH will publish a document in the *Federal Register* containing the new penalty amounts no later than January 15 of each year.

Dated: April 8, 2020.

Caitlin Cater,

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